

On pages 2-3 of the Office Action, the Examiner rejects claims 11-17 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,299,838.

Applicants submit herewith a terminal disclaimer to disclaim the terminal part of any patent granted on this application which would extend beyond the expiration of the full statutory term of U.S. Patent 6,299,838. In addition, Applicants submit that the filing of a terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection.

Accordingly, Applicants respectfully request that the rejection be withdrawn.

**II. Rejection of claims 11-17 under 35 U.S.C. § 103(a)**

On pages 4-5 of the Office Action, the Examiner rejects claims 11-17 under 35 U.S.C. § 103(a) as being unpatentable over JPA-4-188065 (JP '065) in view of EP 0587222 (EP '222).

Applicants respectfully respond as follows.

The Examiner asserts that EP '222 discloses a cover (17) that faces the reagent layer (14).

However, as Applicants have continuously argued, the cover of EP '222 is formed above the absorbent material (16), which is positioned adjacent to at least a portion of the periphery of reading area (15), and a portion of the cover appears to have a lower face facing the reagent layer (14). Therefore, the cover is above the absorbent material (16), and the cover does not cover the reading area (15), which corresponds to the detecting area of the present invention.

In addition, the Examiner asserts that EP '222 discloses that black pigmented means can be used between the absorbent area and the read area.

EP '222 discloses that the absorbent material may be entirely comprised of the light absorbing or reflecting material or color, and discloses that the absorbent material may be black (page 45, lines 48-53). The absorbent material does not correspond to the cover (17), but to the absorbent material (16) in Fig. 1 of EP '222. That is, EP '222 discloses at page 6, lines 34-35, that as shown in Fig. 4, absorbent material (16) takes up (absorbs) wash fluid (22), which contains soluble interferents and unbound label, away from read area (15). Therefore, in EP '222, in order to avoid the influences of fluorescence and luminescence by soluble interferents and unbound label in the measurement of a sample, black materials are used in the absorbent material (16). In other words, EP '222 discloses black as a color of absorbed material in order to block signal generated by unnecessary chemiluminescent or fluorescent label and the like. Therefore, EP '222 neither discloses nor suggests the concept of a cover that absorbs stray light passed through a reagent layer as in the present invention.

In addition, a light absorbing or reflecting means can be positioned between the absorbent material and the read area (19). However, the light absorbing or reflecting means positioned between the absorbent material and the read area does not correspond to a cover (17) nor is it located above the reading area. *See* page 6, lines 54-56 and Fig. 2.

Further, at page 7, lines 2-6, EP '222 discloses that "it is understood that the light absorbing or reflecting material is to be included in the element in a manner to absorb or block signal generated by washed label and other interferents from outside the read area prior to it moving back into the read area."

Therefore, EP '222 does not provide any technical motivation that would lead one of ordinary skill in the art to specifically use a black cover. That is, EP '222 fails to

teach a cover above the reading area, does not disclose that cover (17) can be black, and does not disclose any advantage of using a black cover to absorb light because the light for measurement is not reflected in the invention of EP '222 due to the particular structure of the analytical element. Accordingly, one of ordinary skill in the art would not be motivated to modify the cover of JP '065 so that it is black based on the disclosure of EP '222 to arrive at the present invention.

III. Conclusion

In conclusion, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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